

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

EDWARD LEE HULLUM,

Defendant-Appellant.

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UNPUBLISHED

September 19, 2000

No. 210988

St. Clair Circuit Court

LC No. 97-003553-FC

Before: Cavanagh, P.J., and Saad and Meter, JJ.

PER CURIAM.

Defendant was convicted by a jury of bank robbery, MCL 750.531; MSA 28.799, and conspiracy to commit bank robbery, MCL 750.157a; MSA 28.354(1), and was sentenced as a fourth habitual offender, MCL 769.12; MSA 28.1084, to two concurrent prison terms of thirty to fifty years each. Defendant appeals as of right. We affirm.

Defendant first contends that the trial court abused its discretion in denying his motion for a new trial, judgment of acquittal, or resentencing. We review this issue for an abuse of discretion. *People v Leonard*, 224 Mich App 569, 578; 569 NW2d 663 (1997). Having reviewed defendant's asserted grounds for relief, we conclude that the trial court properly denied the motion.

First, the evidence was clearly sufficient to sustain the jury's verdict. See *People v Hoffman*, 225 Mich App 103, 111; 570 NW2d 146 (1997). The credibility of defendant's coconspirator's testimony was an issue for the jury to determine. *People v LaPorte*, 103 Mich App 444, 447; 303 NW2d 222 (1981). The trial court cannot consider credibility when evaluating the sufficiency of the evidence. See *People v Mehall*, 454 Mich 1, 6; 557 NW2d 110 (1997). Also, considering that the resolution of credibility questions is within the exclusive province of the jury, *People v DeLisle*, 202 Mich App 658, 662; 509 NW2d 885 (1993), and that defendant has not shown exceptional circumstances that would warrant relief based on conflicting testimony, see *People v Lemmon*, 456 Mich 625, 643-644, 647; 576 NW2d 129 (1998), the verdict was not against the great weight of the evidence. See *DeLisle*, *supra* at 661.

Second, defendant's claims of police and prosecutorial misconduct are without merit. Defendant failed to show that the prosecution wrongfully withheld exculpatory evidence. See *People v Fox (After Remand)*, 232 Mich App 541, 549; 591 NW2d 384 (1998). Due to his failure to cite supporting authority, defendant has abandoned his claim that the prosecutor's request to include defendant's alias on the verdict form constituted misconduct. See *People v Piotrowski*, 211 Mich App 527, 530; 536 NW2d 293 (1995). Also, the police did not engage in misconduct by testifying regarding defendant's statement. Whether the officer's or defendant's testimony was more credible was an issue for the jury to determine. See *LaPorte, supra*.

Defendant has not preserved his claim regarding ineffective assistance of counsel because he has failed to brief the merits of his allegations of error that allegedly rendered counsel ineffective, see *People v Kent*, 194 Mich App 206, 210; 486 NW2d 110 (1992), and has failed to cite any authority indicating that the conduct of which he complains rose to the level of prejudicial error warranting relief. See *Piotrowski, supra*.

Next, defendant has not established that he was prejudiced by the alleged incidents of juror misconduct. See *People v Fetterley*, 229 Mich App 511, 545; 583 NW2d 199 (1998). He also has not shown that ex parte communications with the jurors took place or resulted in prejudice. See *People v France*, 436 Mich 138, 161-163; 461 NW2d 621 (1990). Moreover, defendant's claim that the jury was not properly polled is without merit. See MCR 6.420(C). Finally, defendant also failed to sustain his burden of proof regarding his claim that the transcripts of the lower court proceedings were inaccurate. See *People v Abdella*, 200 Mich App 473, 475-476; 505 NW2d 18 (1993).

Furthermore, the trial court lacked the authority to resentence defendant on the ground that his sentence was disproportionate. *People v Wybrecht*, 222 Mich App 160, 168; 564 NW2d 903 (1997). The trial court did have authority to resentence defendant if the information in his presentence report was inaccurate. *People v Marcus Harris*, 224 Mich App 597, 600; 569 NW2d 525 (1997). However, because defendant did not challenge the accuracy of the presentence report at or before sentencing, the report was presumed to be accurate and defendant waived any challenges. See *People v Grant*, 455 Mich 221, 233-234; 565 NW2d 389 (1997); *People v Sharp*, 192 Mich App 501, 504; 481 NW2d 773 (1992). Moreover, defendant's challenges to the report referred to matters that were known to him or at least discoverable before sentencing. Therefore, defendant waived his right to have the trial court consider new information after sentencing. See *Wybrecht, supra* at 172.

Defendant next contends that the trial court erred in denying his postjudgment motions for discovery and appointment of experts to investigate his claims of error. Again, defendant has abandoned these issues by failing to cite supporting authority for his position that he has a right to postjudgment discovery or to have the state pay for independent experts in the hope that they will find support for defendant's motion for a new trial. See *Piotrowski, supra*; *People v Jacobsen*, 448 Mich 639, 641; 532 NW2d 838 (1995). Moreover, fishing expeditions such as that contemplated by defendant are not a valid basis for discovery. See *People v Tomko*, 202 Mich

App 673, 679; 509 NW2d 868 (1993); *People v Baskin*, 145 Mich App 526, 538; 378 NW2d 535 (1985). We find no abuse of discretion in the trial court's denial of these motions. See *People v Fink*, 456 Mich 449, 458; 574 NW2d 28 (1998).

Having failed to establish a right to relief, defendant's claim that the case should be reassigned to a judge in a different county upon remand need not be addressed.

Affirmed.

/s/ Mark J. Cavanagh  
/s/ Henry William Saad  
/s/ Patrick M. Meter